

NOTE:

The following page provides Minimum staffing requirements. Proposal Form 7 completed by the selected Proposer will be incorporated as Exhibit I to the Agreement.

Exhibit I
Minimum Staff Complement for Station

<u>Office</u>	<u>Number of Employees</u>
General Manager	1
Recycling/Compliance Coordinator	1
Accountant	1
HR/Administration Coordinator	1
Accounting Clerk	1
Office Clerk/Receptionist	1
Purchasing/Safety/Training Coordinator	1
 <u>Materials Recovery Facility (MRF)</u>	
Manager	1
Supervisor	1
Forklift Operator	2
Baler Operator	1
Quality Control Manager	1
Lead Sorters	4
Sorters	48
 <u>Transfer and Woodwaste Operations</u>	
Manager	1
Tipping Floor Supervisor	1
Woodwaste Room Supervisor	1
Loader Operators	3
Forklift Operators	2
Compactor Operator	1
Wood Grinder Operator	1
Traffic Control Spotters (Tipping Floor)	2
Traffic Control Spotter (Woodroom)	1
Transfer Drivers	10
Floor Sorters (Tipping Floor)	10
Floor Sorters (Woodroom)	1
 <u>Scale Operations</u>	
Scale Master	1
Assistant Scale Operators	2
Buy Back Attendant	1
 <u>Maintenance</u>	
Manager	1
Electrician	1
Lead Mechanic	1
Mechanic	2
Assistant Mechanics	3

SEE PROPOSAL FORM 7

c:\my documents\SMaRT Station Ops 2000\Contract\Exhibit I (revised9-15-99)

Exhibit I-2

Prevailing Wage Determination Letter 2/28/06
Prevailing Wage Clarification 4/28/06

DEPARTMENT OF INDUSTRIAL RELATIONS

Office of the Director

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February 28, 2006

SMaRT

MAR 03 2006

Debi Sargent, Solid Waste Contract Administrator
City of Sunnyvale
P.O. Box 3707
Sunnyvale, CA 94088-3707

RE: Prevailing wage rates for the Sunnyvale Materials Recovery and Transfer Station

Dear Ms. Sargent:

This is in response to the appeal filed on the prevailing wage information previously provided pursuant to Labor Code Section 1773.11 for the above referenced facility. This replaces the earlier information provided and as discussed in the meeting with the representatives from all of the parties, the wage data collected during the re-investigation was for May of 2004. The change in the prevailing wage rates is a result of the switch from using unverified to verified payroll records in this re-investigation.

The prevailing wage rates are:

Classification	Basic Hourly Rate	Health and Welfare	Pension	Vacation/Holiday	Sick Leave	Total Hourly Rate
Driver	\$23.50	\$3.28 ¹	\$2.15 ²	\$1.54 ³	\$1.08 ⁴	\$31.55
Sorter	\$8.00	\$4.96 ⁵	\$1.20 ⁶	\$0.52 ⁷	\$0.25 ⁸	\$14.93
Buyback Operator	\$12.46	\$4.04	\$2.00 ⁶	\$0.81 ⁹	\$0.38 ⁸	\$19.69
Scale Operator	\$18.00	\$3.73	\$2.00 ⁶	\$1.18 ¹⁰	\$0.55 ⁸	\$25.46
Operator 1	\$15.23	\$2.84	\$2.00 ⁶	\$1.00 ¹¹	\$0.47 ⁸	\$21.54
Operator 2	\$16.83	\$3.72	\$2.00 ⁶	\$1.10 ¹²	\$0.52 ⁸	\$24.17

¹ Contribution is equal to \$569.00 per month. The contribution is required for all regular employees who have worked more than 80 hours in the calendar month immediately preceding the month in which premium payment is made.

² Amount applies to the first 173 hours work per month.

³ Includes an amount for 12 paid holidays. Rate applies to first and second year of service, \$1.99 per hour after two years of service, \$2.44 per hour after 5 years of service, \$2.89 per hour after 10 years of service, \$3.34 per hour after 15 years of service, \$3.80 after 20 years of service, \$4.25 after 25 years of service. Amount applies to the first 173 hours work per month.

⁴ Equals 12 paid sick days per year.

⁵ Contribution is equal to \$860.00 per month. The contribution is required for all regular employees who have worked more than 80 hours in the calendar month immediately preceding the month in which premium payment is made.

⁶ Amount applies to the first 184 hours work per month.

⁷ Includes an amount for 12 paid holidays. Rate applies to first year and second year of service, \$0.68 per hour after two years of service, \$0.83 per hour after 5 years of service, \$0.98 per hour after 10 years of service, \$1.14 per hour after 15 years of service, \$1.29 after 20 years of service, \$1.45 after 25 years of service. Amount applies to the first 173 hours work per month.

⁸ Equals 8 paid sick days per year.

⁹ Includes an amount for 12 paid holidays. Rate applies to first and second year of service, \$1.05 per hour after two years of service, \$1.29 per hour after 5 years of service, \$1.53 per hour after 10 years of service, \$1.77 per hour after 15 years of service, \$2.01 after 20 years of service, \$2.25 after 25 years of service. Amount applies to the first 173 hours work per month.

¹⁰ Includes an amount for 12 paid holidays. Rate applies to first and second year of service, \$1.52 per hour after two years of service, \$1.87 per hour after 5 years of service, \$2.22 per hour after 10 years of service, \$2.56 per hour after 15 years of service, \$2.91 after 20 years of service, \$3.25 after 25 years of service. Amount applies to the first 173 hours work per month.

¹¹ Includes an amount for 12 paid holidays. Rate applies to first and second year of service, \$1.29 per hour after two years of service, \$1.58 per hour after 5 years of service, \$1.87 per hour after 10 years of service, \$2.17 per hour after 15 years of service, \$2.46 after 20 years of service, \$2.75 after 25 years of service. Amount applies to the first 173 hours work per month.

¹² Includes an amount for 12 paid holidays. Rate applies to first and second year of service, \$1.42 per hour after two years of service, \$1.75 per hour after 5 years of service, \$2.07 per hour after 10 years of service, \$2.40 per hour after 15 years of service, \$2.72 after 20 years of service, \$3.04 after 25 years of service. Amount applies to the first 173 hours work per month.

Debi Sargent
February 28, 2006
Page 2 of 2

Classification	Basic Hourly Rate	Health and Welfare	Pension	Vacation/Holiday	Sick Leave	Total Hourly Rate
Heavy Duty Mechanic Diesel (Truck)	\$26.00	\$4.93	\$2.00 ⁶	\$1.70 ¹³	\$0.80 ⁸	\$35.43
Maintenance Mechanic Plant Lead	\$21.67	\$4.43	\$2.00 ⁶	\$1.42 ¹⁴	\$0.67 ⁸	\$30.19
Maintenance Mechanic Plant	\$19.70	\$4.26	\$2.00 ⁶	\$1.29 ¹⁵	\$0.61 ⁸	\$27.86
* Maintenance Mechanic Plant Electric	\$16.12	\$5.67 \$3.79	\$2.00 ⁶	\$1.05 ¹⁶	\$0.50 ⁸	\$25.34 \$23.46
Maintenance Mechanic Plant Apprentice	\$16.67	\$3.85	\$2.00 ⁶	\$1.09 ¹⁷	\$0.51 ⁸	\$24.12
* Maintenance Mechanic Plant Helper	\$14.90	\$5.53 \$3.65	\$2.00 ⁶	\$0.97 ¹⁸	\$0.46 ⁸	\$23.86 \$21.98

¹³ Includes an amount for 12 paid holidays. Rate applies to first and second year of service, \$2.20 per hour after two years of service, \$2.70 per hour after 5 years of service, \$3.20 per hour after 10 years of service, \$3.70 per hour after 15 years of service, \$4.20 after 20 years of service, \$4.70 after 25 years of service. Amount applies to the first 173 hours work per month.

¹⁴ Includes an amount for 12 paid holidays. Rate applies to first and second year of service, \$1.83 per hour after two years of service, \$2.25 per hour after 5 years of service, \$2.67 per hour after 10 years of service, \$3.08 per hour after 15 years of service, \$3.50 after 20 years of service, \$3.92 after 25 years of service. Amount applies to the first 173 hours work per month.

¹⁵ Includes an amount for 12 paid holidays. Rate applies to first and second year of service, \$1.67 per hour after two years of service, \$2.05 per hour after 5 years of service, \$2.42 per hour after 10 years of service, \$2.80 per hour after 15 years of service, \$3.18 after 20 years of service, \$3.56 after 25 years of service. Amount applies to the first 173 hours work per month.

¹⁶ Includes an amount for 12 paid holidays. Rate applies to first and second year of service, \$1.36 per hour after two years of service, \$1.67 per hour after 5 years of service, \$1.98 per hour after 10 years of service, \$2.29 per hour after 15 years of service, \$2.60 after 20 years of service, \$2.91 after 25 years of service. Amount applies to the first 173 hours work per month.

¹⁷ Includes an amount for 12 paid holidays. Rate applies to first and second year of service, \$1.41 per hour after two years of service, \$1.73 per hour after 5 years of service, \$2.05 per hour after 10 years of service, \$2.37 per hour after 15 years of service, \$2.69 after 20 years of service, \$3.01 after 25 years of service. Amount applies to the first 173 hours work per month.

¹⁸ Includes an amount for 12 paid holidays. Rate applies to first and second year of service, \$1.26 per hour after two years of service, \$1.55 per hour after 5 years of service, \$1.83 per hour after 10 years of service, \$2.12 per hour after 15 years of service, \$2.41 after 20 years of service, \$2.69 after 25 years of service. Amount applies to the first 173 hours work per month.

The Department is providing these rates based upon your request. It has not made a determination as to the applicability of these rates to the City of Sunnyvale's contract with Green Team/Zanker for the operation of this above referenced facility. The sole responsibility of the Department in this case is to determine and provide the rates for this non-public works contract.

I hope this addresses your concerns in this matter.

Sincerely,

John Rea
Acting Director

* PER DIR MEMO TO
ALL PARTIES 4/28/06

cc: Duane B. Beeson, Beeson, Tayer & Bodine
Todd Storti, General Manager, Green Team/Zanker
Richard A. Leasia, Thelen Reid & Priest LLP
Douglas H. Barton, Esq., Hanson Bridgett
Paul V. Simpson, Simpson, Garrity & Innes

State of California

DEPARTMENT OF INDUSTRIAL RELATIONS

MEMORANDUM

To: John Rea, Acting Director

Date: February 27, 2006

From: Tim Stahlheber, Research Manager II
Ke Hao Ouyang, Research Analyst I

SUBJECT: City of Sunnyvale, Materials Recovery and Transfer Station (SMaRT Station)

In response to a request from the City of Sunnyvale for prevailing wage information pursuant to Labor Code Section 1773.11, the Division of Labor Statistics and Research has reinvestigated the rates provided to the City in a July 23, 2004 letter for the above referenced facility. The July 23, 2004 decision was based on unverified data supplied by Teamster Local 350 for workers employed at California Waste Solutions (CWS) and Norcal Waste System of San Jose, and by Green Team/Zanker for workers employed at the SMaRT station.

The process for the reinvestigation was discussed in detail at the March 21, 2005 meeting with all of the interested parties (City of Sunnyvale, Green Team/Zanker, and Teamster Local 350). It was decided that since both parties (Teamsters and Green Team/Zanker) had provided May 2004 wage data during the initial investigation, the same time frame would be used for the reinvestigation. There was also a long discussion on the data that should or should not be included in the reinvestigation and what constituted the nearest labor market. Each of the parties was asked to provide a written analysis of the position on this matter.

The Division followed the requirements set forth in Labor Code sections 1773 and 1773.9 in analyzing the data and for the rate recommendations presented in this memorandum. Labor Code 1773 states: "...ascertain and consider the applicable wage rates established by collective bargaining agreements and the rates that may have been predetermined for federal public works, within the locality and in the nearest labor market area. Where the rates do not constitute the rates actually prevailing in the locality, the director shall obtain and consider further data from the labor organizations and employers or employer associations concerned, including the recognized collective bargaining representatives for the particular craft, classification, or type of work involved. ..." Labor Code Section 1773.9 defines the methodology for determining the prevailing wage rate as the majority rate paid for a craft, classification or type of work or the single rate (modal rate) paid to the greatest number of workers if there is no majority rate.

There was a specific suggestion that the Department consider and adopt the rate for Recycling Worker published by the U.S. Department of Labor pursuant to the Service Contract Act for the Sorter Classification. Under the statutes governing "public works," one of the sources listed for determining the prevailing wage rate for a craft, classification, or type of work referenced rates

predetermined for federal public works projects. In the case of the general determination, the Division of Labor Statistics and Research (DLSR) reviews the published Davis-Bacon rates, but only recommend adopting the rates for the craft, classification, or type of work where no wage data are on file with DLSR, or if the data on file with the Division is insufficient to determine a prevailing wage rate. We do not recommend adopting the Recycling Worker rate for the Sorter Classification since the Division has wage and benefit data for over 170 workers from the two firms. In addition, we have a copy of the letter from the U.S. Department of Labor to a Mr. Ahmed Kasem in response to his April 1, 2005 inquiry for information on the Sorter Classification. According to the letter, the rate published in wage determination 1994-2061 Rev (21) issued on June 17, 2004 is a compiled rate using data from several counties instead of a survey rate, which fails to meet the definition of prevailing wage found in Labor Code Section 1773.9.

For the General Prevailing Wage Determinations, if a basic hourly rate is determined to prevail for a particular craft, classification or type of work but does not include an employer payment (benefit) amount, the Division recommends the adoption of the employer payments published in the Davis Bacon determinations since Labor Code section 1773.9(b)(2) requires that all rates include an employer payment amount.¹

The Department obtained certified copies of ADP payroll records from CWS for the month of May 2004 (pay periods ending May 2 through May 23) and from Green Team/Zanker for the month of May 2004 (pay periods ending May 8 through May 29). One of the issues brought up during the meeting and the written correspondence submitted by the parties concerning the reinvestigation of this matter was the labor market for these workers. Therefore, the employers were required to provide the home zip codes for each individual listed on the certified payroll records. The zip code information show that over ninety percent (90%) of the work force at each of these locations have home zip codes from Santa Clara County, and over seventy percent (70%) have home zip codes from the City of San Jose. It appears that the labor market for employees at these firms is Santa Clara County. Neither the Division nor the interested parties could identify any other facilities of a similar nature in the County, but the Teamsters did provide some information for similar facilities located in other bay area counties. Based on the payroll data supplied, the labor market for these workers does not extend beyond the local area of the facility. The data does not support extending the labor market in this case.

California Waste Solutions also provided benefit trust fund records and Payroll spreadsheets for each payroll week for the month of May 2004 (May 9 through May 30). We did not receive a copy of the ADP records for the payroll week ending May 30, 2004, but the spreadsheets for that week did not indicate any employment change for this firm from the preceding four (4) week period (time covered by the ADP records).

There were a few workers at both Green Team/Zanker and California Waste Solutions who worked in multiple classifications and pay scales on the payroll documents. These individuals were classified based upon the rate of pay they received for the majority of hours worked during the given payroll period.

¹ "(2) Other employer payments included in per diem wages pursuant to Section 1773.1 and as included as part of the total hourly wage rate from which the basic hourly wage rate was derived. In the event the total hourly wage rate does not include any employer payments, the director shall establish a prevailing employer payment rate by the same procedure set forth in paragraph (1)."

We analyzed the records based upon the regular straight time hours worked by each individual, but we also found that the majority of workers at both firms worked some overtime for the time periods reported. Based on the weekly payroll records, it is impossible to establish a peak employment day for each classification of worker at each firm, but it is possible to determine a peak employment week for each classification of worker at each firm.

Sorters:

Green Team/Zanker employed 71 Sorters, whom were paid \$8.00 per hour during the payroll week ending May 8, 2004. These Sorters are employed in two different departments at the facility, with the majority of Sorters employed in the Material Recovery Facility (Dept. 600). There were 55 Sorters in the Material Recovery Facility (Dept. 600) and 16 Sorters in the Tip Floor Department (Dept. 650). According to Green Team/Zanker, the Tip Floor Department (Dept. 650) is the part of the facility where the general public can drop off recyclable material.

CWS employed 54 Sorters at either \$12.75 or \$13.00 per hour (\$.25 per hour night premium²) for 3 of the 4 weeks covered by the May payroll records. For the payroll period ending May 9, 2004 there were 53 Sorters.

Employer	5/2/2004	5/9/2004	5/16/2004	5/23/2004	5/29/2004
CWS	54	53	54	54	
Zanker		71	68	70	70

The one issue remaining is the amount of the fringe benefit for the Sorter Classification. During the information gathering stage, Richard Leasia sent us an email with the wage and benefit information Green Team/Zanker attorney Nick Boodrookas forwarded to Jeffrey Woods in May, 2004. We determined from the information provided that the Green Team/Zanker Sorters received employer payments, but the exact level of the employer payment is indeterminate. We sent follow up emails on the 16th, 19th, and 23rd of December in 2005 and the 3rd and 31st of January in 2006 for the fringe benefit level for the Sorter Classification, but have yet to receive a response. Therefore, we see four possible solutions to this.

1. We could adopt the Green Team/Zanker basic hourly rate and the supplemental benefits from the CWS collective bargaining agreement (CBA) covering sorters since we cannot confirm the amount of employer payments the Green Team/Zanker Sorters received.
2. We could publish the unconfirmed total hourly rate (basic hourly rate and fringe benefits) provided by Green Team/Zanker.
3. We could adopt Green Team/Zanker's basic hourly rate and the employer payments published in the U.S. Department of Labor Service Contract determinations.
4. We could wait until we receive a confirmation from Green Team/Zanker before publishing a Sorter rate.

Based on the certified payroll records, we determined the Green Team/Zanker basic hourly rate to be prevailing, but we have yet to receive a confirmation on the fringe benefit level. Therefore, we can not adopt the Green Team/Zanker fringes. In a letter dated May 24, 2005, Sandra W.

² When measuring the modal rate, a shift premium is disregarded.

Hamlett of the U.S. Department of Labor indicated that wage rate published in the wage determination under the Service Contract Act for Recycling Worker was not based on a survey of the market. She indicated that it was derived using survey data collected for the Refuse Collector classification. There is no way to determine if any workers in Santa Clara County are being paid the basic hourly rate and employer payments listed in the federal determination for this classification. The only verifiable fringe benefit information we have on file for the sorter classification comes from CWS with 54 sorters all paid the same fringe benefit amount pursuant to the CBA. Therefore, we recommend adopting option 1, to remain consistent with the Labor Code requirements and the manner in which we publish the General Prevailing Wage Determinations.

Lead Sorters:

CWS employed two (2) Lead Sorters (one for each shift) for each payroll period at \$14.03 and \$14.08 per hour. There were four (4) workers in this classification at Green Team/Zanker for the payroll weeks ending May 8, 2004 and May 16, 2004 and three (3) workers for the remaining two periods. The Lead Sorters at Green Team/Zanker are all paid \$8.80 per hour.

Equipment Operators:

According to Larry Daugherty of Teamster Local 350, the equipment at both plants is similar. He indicated that the bailers and some of the loaders at the Green Team/Zanker facility were slightly larger than those used at CWS. The Equipment Operators (including the Scale Operators) at both locations are covered by Collective Bargaining Agreements with Teamster Local 350. The CBA covering the Sunnyvale location expired on April 30, 2004.

Green Team/Zanker employed a total of fourteen (14) Equipment Operators (bailers, loaders and forklifts) in each of the four week period covered by the payroll records. There were eight (8) Operators (Operator I) at \$15.23 per hour and six (6) Operators (Operator II) at \$16.83 per hour. These numbers are constant for each week in the payroll data.

CWS employed 12 workers at either \$15.75 or \$16.00 per hour (\$.25 night premium) at the Operator classification during the week ending May 9, 2004. According to the documentation and supplemental information provided by CWS, two (2) of these workers are Scale Operators, one (1) performs general maintenance, and nine (9) operating the various types of equipment (bailers, loaders and forklifts) at the CWS facility during the peak payroll period.

Scale Operators:

Green Team/Zanker employed three (3) Scale Operators at \$18.00 per hour while CWS employed two (2) Scale Operators both at \$15.75 per hour.

Lead Operators:

CWS employed the largest number of Lead Operators during the period under review. The total number varied from a low of three (3) in the week ending May 9th to a high of five (5) in weeks ending May 16th and May 23rd. During the weeks ending May 16th and May 23rd, there were two

(2) Lead Operators at \$17.33 and three (3) at \$17.58 per hour respectively. Green Team/Zanker reported one (1) Lead Operator II at \$18.51 per hour.

Employer	Classification	5/2/2004	5/9/2004	5/16/2004	5/23/2004	5/29/2004
CWS	Operator	8	9	8	7	
	Scale Operator	2	2	2	2	
	Lead Operator	4	3	5	5	
Total		14	14	15	14	
Zanker	Operator I		8	8	8	8
	Operator II		6	6	6	6
	Scale Operator		3	3	3	3
	Lead Operator II		1	1	1	1
Total			18	18	18	18

In a March 23, 2005 letter from the City of Sunnyvale providing a more detailed description of the worker classifications, the Operator I classification duties were limited to operating forklifts and the Operator II classification duties included the operation of both the loaders and bailers. According to the City, the list of duties and information were provided by Green Team/Zanker. In the data provided by CWS, workers in their Operator classifications (other than Scale Operators) operate all the various equipment and bailers at the facility.

The issue here is how to handle the differences in the equipment operated at each facility with respect to the Operator classification and how we handle the three (3) different wage rates (\$15.23 for Operator I, \$16.83 for Operator II, \$18.51 for Lead Operator II) paid to the different classes of operators at Green Team/Zanker and the two (2) rates (\$15.75 and \$16.00 for Operators, \$17.33 and \$17.58 for Lead Operators, \$0.25 per hour shift premium) paid to operators at CWS. In the Director's General Prevailing Wage Determinations there is a rate differential under the Operating Engineer Determinations for different types of equipment. However, these determinations are based on master Collective Bargaining Agreements covering large geographic regions and are for the construction industry.

There are two options in this case:

1. We could add all of the Equipment Operator classifications (including the Lead Operator classifications) and determine the CBA with the most "Equipment Operators" covered to be prevailing.
2. We could separate the classifications and analyze them based on the rate paid and type of work performed.

Labor Code Section 1773 sets forth that the prevailing rate is "...The rate fixed for each craft, classification, or type of work shall be not less than the prevailing rate paid in the craft, classification, or type of work. ..." and Labor Code Section 1773.9(b)(1) provides the methodology for determining the prevailing rate "The basic hourly wage rate being paid to a majority of workers engaged in the particular craft, classification, or type of

work within the locality and in the nearest labor market area, if a majority of the workers is paid at a single rate. ..." Both these statutory provisions refer to craft, classification or type of work. This statute also refers to an alternative rate if a modal rate cannot be determined. Based on an analysis of the payroll data and the supplemental information provided we can determine that there were three (3) Scale Operators at Green Team/Zanker and two (2) Scale Operators at CWS. We recommend adopting the rate in the CBA covering the workers at the Green Team/Zanker Facility since this CBA prevails for the Scale Operator Classification.

We cannot determine anything else about the remaining workers in the equipment operator classification found at the two plants. At both facilities these individuals operate bailers, forklifts, or loaders. There is no way to distinguish from the payroll records or from the different CBAs that cover these workers at each facility if there is a different rate of pay for the various types of equipment used or operated. In addition, the interested parties have indicated that the equipment used at both facilities is similar. Therefore, since there is no way to determine if there are more individual bailer, loader or forklift operators at one site opposed to the other and there is general agreement that the equipment used at both sites is similar these workers and the data must be analyzed as a group. There are more workers in the operator classification at Green Team/Zanker than at CWS. Based on this analysis the rates paid at the Green Team/Zanker prevail.

The only wage information we have for the Maintenance Mechanic Plant and Buyback Operator classifications is from Green Team/Zanker. Therefore, we recommend adopting these rates as prevailing. We also recommend the adoption of the Maintenance Mechanic Plant Apprentice classification found in the Green Team/Zanker payroll data. Labor Code sections 1777.1 and 1777.5, govern the employment of apprentices on "public works" projects. These sections require that apprentices be registered (enrolled) in an approved apprenticeship program, before they can be employed on a "public works" project. This is a request for prevailing wage rates pursuant to Labor Code section 1773.11 for a project or contract that does not fall within the scope and operation of a "public works". As this is not "public works" there is no restriction on apprentices and since Maintenance Mechanic Plant Apprentice is a "type of worker" we recommend that the classification be adopted.

With respect to the Transfer Driver Classification, the only verifiable data we have is from Green Team/Zanker. Norcal of San Jose employs more drivers than Green Team/Zanker, but they refused to verify their data or provide us with any clarification concerning their payroll records. In addition, we are analyzing this data at the type of work and industry specific level. Although Norcal's primary operation involves refuse collection, they have indicated that they assisted CWS in the transfer process but would not provide any details. Based on a review of the payroll data we do have from Norcal, it would be virtually impossible to identify the individual(s) who are performing this work. The payroll records indicate that the employees are separated into ten (10) different work groups (Casual Pool, Bulky Item, Cart Delivery, Yard Maintenance, A Group, C Group, Box, Sweeping, Waste, Truck & Garage). None of the groups can be identified as the group that is performing the transfer process. The bulk of the workers are included in the

Casual Pool (27), A Group (37), C Group (29), or Waste (15). In the seven other groups listed, there are no more than three (3) workers at a single rate.

It is unlikely that a subpoena for these records would provide the level of detail we would need for our analysis. The firm would need to provide us with a detailed breakdown (either daily or weekly) for the individual(s) that were assigned this work. This is a small segment of the work performed by this firm and it is unlikely that their payroll records would provide this level of detail.

Green Team/Zanker employed eight (8) workers at the Transfer Driver rate in their CBA. Based on this information, we recommend adopting the Transfer Driver rate in the CBA covering the Green Team/Zanker facility for the Transfer Driver classification.

As for the public drop-off facility, CWS indicated that workers from various classifications assist the public at the drop-off station during business hours. Since CWS does not maintain records of time spent at the drop-off stations, and workers are paid based on their classification while assisting the public at the drop-off station, we do not have enough information to determine the prevailing wage rate for public drop-off facility workers.

cc: Maria Y. Robbins, Deputy Chief – DLSR
Laura Davis, Counsel – OD Legal

STATE OF CALIFORNIA

Arnold Schwarzenegger, Governor

DEPARTMENT OF INDUSTRIAL RELATIONS

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April 28, 2006

REC'D MAY 2 '06 DCA

ALL PARTIES

Re: Prevailing Wage Determination: City of Sunnyvale - Green Team/Zanker

Dear Parties,

This is to provide some clarification to the parties regarding our revised wage determination in this matter, dated February 28, 2006, and also to respond to the points raised in the letter dated March 29, 2006 from Mr. Leasia.

We issued a wage determination for various classifications of recycling plant workers pursuant to a request under Labor Code section 1773.11¹. This statute became effective January 1, 2004, and the instant case was among the first to require us to interpret it. Section 1773.11 requires this Department, upon request by a state or political subdivision, to issue up to 20 wage determinations per year for projects which are not public works. Unlike in the public works arena, the Department has no jurisdiction to enforce the determinations it issues under this statute, and the wage rates are not mandatory or binding upon the parties except by way of private contract.

The original wage determination was issued on July 23, 2004, based upon a wage survey of two recycling facilities - Green Team Zanker's SMART station (GTZ) and the California Waste Solutions facility (CWS). For the Sorter classification (the largest category) the rate at CWS was found to be prevailing. However, over the next few months, various parties raised allegations that the determination was based upon inaccurate data concerning the numbers of Sorters working at each of the surveyed facilities. After obtaining position statements from all sides, we determined that because the original wage determination was based upon unverified data, we would issue a revised determination based upon verified data. After a great deal of difficulty in obtaining verified data from the various parties, a revised determination was issued on February 28, 2006, finding that the rate at GTZ was prevailing as to the Sorters and also as to the other classifications under study.

Title 8, California Code of Regulations, section 16303 vests the director with authority and wide discretion in making prevailing wage determination, and provides as follows:

¹ All statutory references herein are to the Labor Code unless otherwise specified.

" (a) The authority of the Director to establish the prevailing wage for any craft, classification, or type of worker is quasi-legislative. The Director has the discretion to establish these prevailing wages in a quasi-legislative manner which may include an investigation, hearing or other action...

...(b) The Director may in his or her discretion initiate an investigation or hold a hearing or take such other action as is reasonably necessary which would best effectuate the purposes of the law and of these regulations"

In *Slurry Seal Ass'n v. Department of Industrial Relations* (2002) 98 Cal.App.4th 651, the court further explained that the Director has discretionary authority pertaining to prevailing wage determinations and his decisions will be overturned only when arbitrary and capricious or in conflict with the clear terms of statutory mandate. The *Slurry Seal* court went on to specifically rule that the Director had properly exercised his discretion in that case by rescinding an outdated wage determination and replacing it with a new one, even if, as the losing party argued, the replacement rate did not actually prevail in the locality. Here, like in *Slurry Seal*, the Director has rescinded a defective wage determination and replaced it with a corrected one, which, it has been argued, includes rates not actually prevailing in the locality. As discussed in detail below, the Director has properly exercised his discretion in issuing the corrected wage determination, it is now final and it will not be reviewed a second time.

Method for Calculating the Prevailing Employer Payment Rate for Sorters

Section 1773.11 requires the Department to determine the prevailing wage in this case "as otherwise provided by law."

Section 1773.9 provides:

- (b) The general prevailing rate of per diem wages includes all of the following:
 - (1) The basic hourly wage rate being paid to a majority of workers ... if a majority of the workers is paid at a single rate. If no single rate is being paid to a majority of the workers, then the single rate being paid to the greatest number of workers, or modal rate, is prevailing. If a modal rate cannot be determined, then the director shall establish an alternative rate ...
 - (2) Other employer payments included in per diem wages pursuant to Section 1773.1 and as included as part of the total hourly wage rate from which the basic hourly

wage rate was derived. In the event the total hourly wage rate does not include any employer payments, the director shall establish a prevailing employer payment rate by the same procedure set forth in paragraph (1). [emphasis added.]

In preparing the revised determination, the DLSR needed to obtain accurate, verified information concerning employer payments for health and welfare benefits. On multiple occasions², DLSR asked GTZ to provide specific, validated benefits information for May 2004³, but none was ever received. On December 8, 2005, GTZ produced a letter to DLSR, dated May 13, 2004, from attorney Nick Boodrookas and a chart showing that GTZ paid sorters \$3.17 per hour in benefits, on average. GTZ believes that the chart was compiled sometime in April or May, 2004, but it does not specify the payroll periods covered, the source of the data, nor the types of benefits included. DLSR then advised GTZ that this non-specific, unverified data could not be used. And, as it turns out, the data may be inaccurate. The March 29, 2006 letter from Green Team Zanker, with an accompanying declaration by company General Manager Todd Sorti, asserts that the correct amount is less - \$1.93 per hour in benefit, on average.

Parties to a wage determination are under an ongoing obligation to provide information needed by the Department. Title 8, California Code of Regulations, section 16200(e)(2) requires the parties to submit certain information to the director, including the amounts of employer benefit payments. Here, because GTZ failed to provide the Department with requested benefit payment information, the Director, exercising his discretion under Title 8, California Code of Regulations Section 16303, had no choice but to use the data that had been provided to make a determination pursuant to Labor Code section 1773.9.

Because GTZ did not provide benefits information, the total hourly rate for Sorters did not include any employer payments for benefits. Therefore, the Department followed the procedure prescribed by Section 1773.9 (b)(2) to establish the prevailing employer benefits payment rate. Lacking any information from GTZ, the Department identified the modal rate from the information that was available - the collective bargaining agreement information

² DLSR requested this information from GTZ on 5 separate occasions: December 16, 19 and 23, 2005, and January 3 and 31, 2006. GTZ had explained that its computer server had lost some data and the data might need to be regenerated manually. However, this was not done.

³ The original determination used data from May 2004. Unlike most construction projects, both the recycling facilities used in the wage survey have a stable workforce, therefore a 12-month survey is not necessary as it will not yield different or better results than from a one-month survey. When the original determination was reconsidered, the Department looked back to the same period of time as the original survey. The purpose was to obtain verified information that had previously been unverified, to ensure an accurate result - not to conduct an entirely new survey. Accordingly, the revised determination is also based upon data from May 2004.

from sorters at CWS. At CWS, there were 54 sorters all being paid the same benefits rate of \$6.93 per hour. Because all other Sorters in the locality - i.e., the 71 sorters at GTZ - were being paid an unknown amount of benefits, the modal rate became \$6.93 per hour.

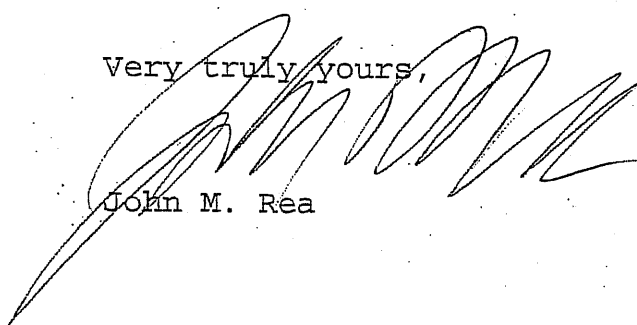
Title 8, California Code of Regulations section 16300 provides that the Director reserves the right to make all final determinations. The final wage determination in this matter was issued on February 28, 2006, and the Director cannot consider untimely information that is submitted after the fact.

Prevailing Health and Welfare Benefits Rates for Maintenance Plant Electric and Maintenance Plant Helper Classifications

Title 8, California Code of Regulations section 16206 provides: "Upon his or her own initiative or at the request of any interested party, the Director shall correct any error in a published determination that is the result of clerical error, such as a typographical error or a transposition of letters or digits, by issuing a corrected determination or a modification of the determination. The Director may correct any error issued in a determination by reissuing such determination. "

The revised determination found that the Health and Welfare benefit amount for Maintenance Mechanic Plant Electric Workers was \$5.67 and the Health and Welfare benefit amount for Maintenance Mechanic Plant Helper Workers was \$5.53. Apparently there was a typographical error in reproducing these numbers for the determination. The correct numbers should be \$3.79 for Maintenance Mechanic Plant Electric Workers and \$3.65 for Maintenance Mechanic Plant Helper Workers. These numbers were derived from benefits totals⁴ provided by GTZ in May 13, 2004 letter from Mr. Boodrookas, confirmed by GTZ in December of 2005 and they were the numbers the DLSR intended to use for the Health and Welfare benefit amount. This clerical error will be corrected, and the Wage Determination will be re-issued accordingly pursuant to Title 8, California Code of Regulations, Section 16206.

Very truly yours,



John M. Rea

⁴ The DLSR used the CBA rates covering the workers at GTZ to determine the Vacation, Holiday, Pension and Sick Leave amounts. The DLSR then deducted these amounts from the total provided by GTZ and derived the remainder as the rate for health and welfare benefits.

cc: all parties

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Exhibit I-3
Benefit Monetization Procedure Worksheet

Classification:

Hourly rate

Hourly wage straight-time:

Hourly wage overtime, holiday pay

Monthly Contributions:

Monthly rate

**Divided by
hours**

Medical and hospital care, prescription drugs,
dental care, vision care, diagnostic services,
and other health and welfare programs

173.33

Life, accidental death and dismemberment,
and disability or sickness and accident insurance

173.33

Supplemental unemployment benefits

173.33

Thrift, security savings, supplemental trust,
and beneficial trust funds

173.33

Other employer payment for benefits for
employees, their families and dependents,
and retirees as included as "per diem" in CCR Title 8,
Article 1 Section 16000 Definitions

173.33

Annual Contributions

Annual rate

Vacations and holidays with pay (or cash payments in
lieu thereof)

2080

Sick days with pay (or cash payments in lieu thereof)

2080

Other employer payment for benefits for
employees, their families and dependents,
and retirees as included as "per diem" in CCR Title 8,
Article 1 Section 16000 Definitions

2080

Total hourly "per diem"

EXHIBIT J

OPERATING STANDARDS AND PROCEDURES

1. **Signs.** The City will post easily-readable signs at the entrance to the Transfer Station detailing the regulations which must be followed by vehicles entering the station, indicating the hours of operation, the types of waste and Recyclable Materials accepted, the rates charged, and a local telephone number to call for information or in case of emergency. Contractor shall maintain and repair these and other on-site signs. Contractor shall not post any signs without the prior written consent of the City.

2. **Traffic Control.** Contractor shall be responsible for the safe control and direction of traffic once it enters the Transfer Station Site. Contractor shall make optimal use of queuing lanes and unloading spaces and shall operate and store vehicles so as not to impede on-site traffic.

3. **Floor Operation and Transfer Loading.** The depth and breadth of Municipal Solid Waste on the Transfer Station floor shall not reach a point where unloading by users is hampered. Solid waste shall be loaded into transfer trailers so the gross weight of the transfer tractor and trailer does not exceed weight limitations for streets or highways established by the public agency or agencies having jurisdiction therefor. At least once during each 24 hour period, the Transfer Station floor will be completely cleared of all solid waste. Contractor may accomplish this in phases, in a written plan approved by City.

4. **Control of Blowing Debris.** Contractor shall sweep daily (1) all areas within the Transfer Station Site, and (2) Carl Road east of Borregas Avenue. In addition, Contractor shall police at least twice weekly the street frontages abutting the Site (i.e., Borregas Avenue from Carl Road to Moffett Park Drive; Matilda Avenue from Highway 237 to Caribbean Drive and Caribbean Drive from the north end of Matilda Avenue to Highway 237), collecting all debris along these streets. Materials so collected shall be disposed of at the Transfer Station.

5. **Vector Control.** Contractor shall conduct the operation of the Transfer Station in such a manner as to ensure that conditions are unfavorable for production of rodents and insects. In the event that rodent and insect activity becomes apparent to the Local Enforcement Agency or the City, supplemental vector control measures shall be initiated by Contractor, as directed by the Local Enforcement Agency and the City.

6. **Odor, Dust and Noise Control.** Contractor shall control odor and dust at the Transfer Station by use of installed dust control systems and odor control programs, as described in the FEIR. Contractor shall operate its equipment within limits of applicable noise regulations.

7. **Fire Control.** Contractor shall provide all necessary and appropriate fire control equipment. Prior to commencing operations at the Transfer Station,

Contractor shall submit a fire control/handling plan for the Transfer Station and obtain approval from the City.

8. Weighing. Contractor shall weigh all Municipal Solid Waste delivered by the City, the other Participating Agencies, their respective Designated Haulers and by any other municipalities or their Designated Haulers. Contractor shall calculate the weight of Publicly Hauled Waste by determining the volume of all vehicles delivering such waste and applying the conversion factors in Exhibit M. (If actual weighing of such vehicles becomes legally required under state or federal law, City shall make the necessary changes to the scales, including the addition of new scales and scale lanes, to accommodate the weighing efficiently. [The weighing of vehicles delivering Publicly Hauled Waste will be considered a change in scope under Section 10.20.]) Contractor shall weigh each loaded transfer vehicle as it leaves the Transfer Station for the Disposal Site. Contractor shall also weigh all source-separated Recyclable Materials delivered to the Station.

All such scales and weighing equipment shall be kept in good and accurate condition operating at the standards of accuracy and reliability specified in Title 4 California Code of Regulations Division 9. Contractor shall request that the California Department of Food and Agriculture, Division of Measurement Standards, inspect all scales and weighing equipment at least once per year. In addition, Contractor shall check the accuracy of scales using appropriate methods (for example by weighing the same load on two scales) when requested by the City, but not more than once per week.

If a scale or weighing equipment is found to be measuring inaccurately and the errors are outside the tolerances allowed in Title 4 California Code of Regulations, Division 9, Contractor will promptly repair or recalibrate it so that it does operate accurately.

Vehicles delivering Recyclable Materials collected through curbside and other programs shall be weighed so that the weight of each separated compartment of materials (e.g., aluminum, glass, plastic, newspaper, etc.) is separately measured and recorded. This will be accomplished by multiple weighings, after the vehicle has unloaded each separate compartment of material. If a predetermined tare weight for each vehicle is used in this process, the last material unloaded will be newspaper or whatever is the lowest unit-value material. At City's request, Contractor shall sort representative samples of materials to determine their actual material-by-material composition.

9. Establishment of Vehicles' Tare Weights. On or before November 1, 2007, Contractor shall provide the City with a copy of its standard methodology for determining tare weights for City's review and approval. Contractor shall modify its standard methodology if requested to do so by City. Between January 1 and March 1, 2008, Contractor shall weigh each vehicle of the City, the Participating Agencies and their Designated Haulers which will or may be used to deliver Municipal Solid Waste or Recyclable Materials to the Transfer Station, to determine their unloaded ("tare") weights. Vehicles to be weighed include, but are not limited to, front, side and rear loaders, roll-off trucks, street sweepers, recycling trucks, pickup trucks, vans and trucks and trailers. In addition, during the same period of time, Contractor shall

weigh each transfer trailer which will or may be used to deliver Municipal Solid Waste to the Disposal Site.

The tare weight of each vehicle shall be recorded by Owner (i.e., City, hauler or Contractor) and vehicle number and the tare weights of all vehicles will be furnished to the City within thirty (30) days after each vehicle is weighed. Contractor shall be responsible for coordinating the weighing of vehicles with City and the other Participating Agencies and their Designated Haulers.

When additional or replacement vehicles are placed into service by the City, the other Participating Agencies or their Designated Haulers, or the Contractor and when the City or other Participating Agencies change their Designated Haulers, Contractor shall promptly weigh such additional and replacement vehicles and the vehicles of the new Designated Hauler and provide the tare weights to the City within thirty (30) days after the vehicles are weighed.

All weighing shall be conducted at the Transfer Station by a certified weighmaster. Weighing shall be conducted in accordance with Contractor's standard methodology, in the form approved by the City.

Contractor shall have the right to conduct random re-weighing of all vehicles, provided that re-weighing of any vehicles shall occur no more than twice a year. If requested in writing by City, all vehicles delivering Municipal Solid Waste or Recyclable Materials to the Transfer Station or delivering Municipal Solid Waste to the Disposal Site shall be reweighed by Contractor, following the City approved methodology, at six (6) month intervals. In addition, any specific vehicle shall be reweighed by Contractor at City's request, within one (1) week after City delivers a written request to do so. Adjusted tare weights shall be furnished to the City within thirty (30) days after re-weighing.

10. Cubic Yard - Ton Conversions. If the scales and weighing equipment are temporarily out of service, Contractor shall:

- 1) for collection vehicles owned by Designated Haulers, use the average Tons recorded for each vehicle for its three deliveries immediately preceding the outage;
- 2) for debris boxes, use the rated capacity of the box in cubic yards multiplied by the yards to tons factor for miscellaneous Publicly Hauled Waste on Exhibit M; and
- 3) for Publicly Hauled Waste, Contractor shall measure and record the amount of such waste in cubic yards. Cubic yards shall be converted to Tons for purposes of payments due under Articles 6 and 7 by utilizing the conversion factors set forth in Exhibit M.

Contractor shall arrange for scales to be repaired or temporary substitute scales to be used as soon as possible and, in any event, within forty-eight (48) hours after the failure of the permanent scales.

11. Personnel. There will be at least one employee of Contractor physically in attendance at the Transfer Station at all times, whether or not the Transfer Station is operating, or open.

During the hours of 6 a.m. to 7 p.m., seven (7) days a week, there will be a Station Manager or lead worker who is the representative of Contractor on-site. City will be informed of his/her name. At all other times, there will be a supervisory employee designated as emergency coordinator who will be on-call. Employees who are on-site (and the City) will be instructed how to contact this emergency coordinator.

When the Transfer Station is operating outside of the regular operating hours, there will be a night supervisor on-site. If there is more than one employee on-site, one will be in charge and employees (and the City) will be informed as to the chain of command.

12. Training of Personnel. Contractor shall provide adequate operational and safety training for all of its employees who are involved in performing operations at the Transfer Station. All such personnel shall be trained in the identification and proper handling and disposal of Hazardous and Biomedical Wastes. The training will comply with the health and safety plan. Contractor will comply with the health and safety plan, unless changes thereto are approved by the City.

13. Equipment.

A. General. All equipment shall comply with all applicable federal, state, and local laws, including (1) U.S. Department of Transportation: Federal Motor Vehicle Safety Standards; Federal Motor Carrier Safety Regulations; Interstate Motor Carrier Noise Emissions Standards, (2) U.S. Environmental Protection Agency: Control of Air Pollution from New Motor Vehicles and New Motor Vehicle Engines, and (3) Bay Area Air Quality Management District.

B. Tractors and Trailers. All tractors and transfer trailers (individually and in combination) shall comply with the laws described in subsection A. Tractors and transfer trailers shall be painted in a uniform color scheme approved by the City of Sunnyvale and shall prominently display a SMaRT Station service mark (logo), the design and placement of which are subject to City approval.

C. Between October 1 and December 1, 2007, Contractor shall submit to City a list of the equipment it proposes to use at the Transfer Station and in delivering Municipal Solid Waste to the Disposal Facility.

D. Contractor shall furnish backup, substitute or replacement equipment necessary to continue uninterrupted operations, transfer and disposal when equipment regularly in service is inoperable or unavailable.

E. All loaded transfer trailers must be parked on the tipping floor.

F. Contractor shall use blade guards and rubber tires on all mobile equipment operated in and around the Station and shall use due care in their operation to avoid damaging the tipping floor.

14. Cleaning and Maintenance.

A. General. Contractor shall maintain all properties, facilities and equipment used in providing service under this Agreement in a safe, clean, neat, and operable condition at all times.

B. Cleaning. Tractors, transfer trailers and other rolling stock shall be kept clean, shall be thoroughly washed on the exterior at least once every week and thoroughly cleaned with pressurized hot water at least once per year.

Building office areas shall be cleaned daily. Work areas within buildings and structures shall be swept daily and washed twice a week. Dust and debris shall be removed daily from stationery equipment and rolling stock. The refuse transfer truck loading area shall be cleaned and swept at the end of each operating day. Facility roadways, outside work areas and parking areas will be cleaned and swept daily.

Municipal Solid Waste may not be left on the tipping floor for more than 24 hours.

Municipal Solid Waste (other than Recyclable Materials) shall be removed to the Disposal Facility within 48 hours after its delivery to the Transfer Station. Municipal Solid Waste shall not be burned or buried at the Transfer Station Site. Wastes shall not be disposed of into storm drains, or into sanitary sewers without proper pretreatment meeting the requirements of the Sunnyvale Industrial Waste Program.

The transfer building(s) shall be thoroughly cleaned with pressurized hot water at least once per year and one month prior to expiration of the Term of this Agreement.

C. Painting. Vehicles shall be repainted and/or refurbished so that they present an acceptable appearance in the opinion of the City's Public Works Director.

All surfaces on the interior of all buildings and structures shall be repainted or refurbished by Contractor so that they present an acceptable appearance in the opinion of the City's Public Works Director, provided that painting will not be required more often than once every four years. The type of paint, color and method of application shall be submitted to the City for review and approval prior to commencement of repainting work.

D. Maintenance and Repair; Alterations.

1. City's Obligations. Subject to Section 20, City shall maintain in good condition the roofs, structural portions and exterior walls (but not plate glass, glass windows, window frames, doors and door frames, which are the responsibility of Contractor), and paved exterior areas, unless such maintenance and repair becomes necessary in whole or in part due to acts of Contractor, in which case Contractor shall pay City the reasonable cost of such maintenance. City shall

regularly maintain (e.g. water, weed, prune and repair) all landscaped areas within the Station Site. City shall repair or replace, if and when necessary, the tipping floor.

2. Contractor's Obligations. Subject to Section 20, Contractor shall keep and maintain in good, clean, safe condition and repair the Station building, appurtenances and every part thereof, including without limitation the stationary equipment, such as conveyors and below grade conveyor pits, compactors, trommels, balers, shredders and screens; plumbing and sewage facilities; mechanical, electrical, lighting, heating, ventilating and air conditioning systems; fire and dust suppression systems; fuel storage and dispensing facilities; weigh scales, scalehouse, fencing, drains and drainage control systems, and all personal property furnished by Contractor including vehicles.

Contractor shall perform periodic maintenance on all equipment, in accordance with applicable manufacturer's specifications and schedules and so as to maintain in force any manufacturer's/vendor's warranties. City will assist Contractor in securing manufacturer's/vendor's repair and replacement of equipment due under warranties (if any) provided to City in connection with the purchase of such equipment which Contractor is required to maintain and repair.

Contractor shall also repair any damage to any facilities, whether owned by it or City, caused by the actions of its employees, subcontractors or other agents. Contractor shall replace all plant materials (trees, bushes, etc.) which are damaged or killed by Contractor's operations with plant materials of the same type, unless a different type is approved in advance by the Director of Public Works or the City's Landscape Maintenance Supervisor. All completed replantings shall be approved by the City's Landscape Maintenance Supervisor.

Contractor shall be responsible for securing replacement parts (and for maintaining an inventory of spare parts as agreed on with City) for all equipment and for Station systems and facilities which it is required to maintain and repair. City will reimburse Contractor for the out-of-pocket cost of replacement parts used for stationary equipment owned by City. The cost of all other replacement parts, including those for equipment furnished by Contractor and for Station systems and facilities, will be borne by Contractor and is therefore included in the compensation provided under Article 5. The cost of all labor required for maintenance and repair performed by Contractor will be borne by Contractor and is included in the compensation provided under Article 5.

Contractor shall not make any alterations to the Station or to facilities or equipment owned by City without City's prior written consent. In order to obtain such consent, Contractor shall submit plans and specifications, or other form of description as required by City, to City prior to commencing any alteration. If Contractor performs any alteration work prior to receiving City approval, City may require Contractor to remove all such work at Contractor's sole expense and restore the Station, facility or equipment to its prior condition.

E. Wastewater Disposal. The wastewater collected in the Station's sumps (from Municipal Solid Waste, wash-down operations, etc.) does not meet the standards for discharge to the Sunnyvale Water Pollution Control Plant, Contractor

shall be responsible for periodic pumping of collected wastewater by a pumping truck, its transport offsite and proper disposal in accordance with applicable regulations. The Contractor shall be responsible for the cost of pumping, transport and disposal.

15. Complaints about Operation of Transfer Station. All complaints about the operation or maintenance of the Transfer Station shall be directed to the person designated as Station Manager by Contractor. Such complaints shall not be directed by Contractor to City. The Station Manager shall compile a log of all complaints brought to his or her attention or that of his or her staff, indicating the date and time the complaint was received; the name, address and telephone number of the party making the complaint; and the action taken to correct or modify the situation complained of. Each month Contractor shall send to City a copy of the log of complaints for the previous month.

16. Tours of Transfer Station. Upon reasonable request of City, Contractor shall provide tours of the Transfer Station. Such tours shall not unreasonably disrupt Transfer Station operations. Contractor shall not be required to conduct such tours more frequently than once per week. City shall not be charged for labor, overhead, overtime, or any other costs associated with any such tours. Contractor shall distribute the brochures described in Section 18 to participants on the tours.

17. Brochures. Contractor shall prepare an educational brochure, printed on recycled paper, describing the Transfer Station operations and addressing conservation, recycling and general solid waste management programs. The City shall be provided the brochure in draft and shall have absolute authority over its text and format. Upon approval by City, Contractor shall arrange for the brochure to be printed and will provide City with 10,000 copies. Alternatively, at City's option, Contractor will provide City with \$25,000 and City will take responsibility for design and production of the brochure. All written material prepared for distribution by Contractor regarding the Station shall be approved by City prior to its distribution.

18. Customer Courtesy. Contractor shall insure that its employees deal with members of the public in a courteous and professional manner.

19. Destruction of Premises. If the Station is totally or partially destroyed from a risk covered by insurance in effect at the time, City shall restore the Station to substantially the same condition as it was in immediately before destruction, provided that City's obligation hereunder is limited to the amount of insurance proceeds it receives. Such destruction shall not terminate this Agreement.

If the Station is totally or partially destroyed by a risk not covered by insurance then in effect, City shall have the election to terminate this Agreement or to restore the premises, such election to be made within a reasonable time after the destruction occurs.

20. Use of Premises. Contractor shall use the Station and Station Site only for processing of Municipal Solid Waste delivered under this Agreement and for directly related support purposes.

21. Spill Response Plan. Contractor shall provide kits for cleanup of spills of hazardous materials, including used motor oil, on the Station Site. Contractor shall implement the Spill Response component of the Hazardous Waste Exclusion Program set out as Exhibit G to this Agreement.

22. Site Security Cameras. Contractor shall be responsible for maintaining existing site security cameras and for installing any additional cameras necessary to assure adequate site security.